

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARCIA COLLINS)	
Claimant)	
VS.)	
)	Docket No. 186,974
CESSNA AIRCRAFT COMPANY)	
Respondent)	
Self-Insured)	

ORDER

Claimant appeals from the post-award Order of Administrative Law Judge John D. Clark, dated June 3, 1997, wherein the Administrative Law Judge found claimant entitled to benefits at the rate of \$313.00 per week through April 10, 1996. Thereafter, claimant's new disability rating of five percent functional impairment resulted in claimant being owed fewer weeks than was due on April 10, 1996, and the Administrative Law Judge found "the respondent owes nothing more." Oral arguments were presented September 12, 1997, in Wichita, Kansas.

ISSUES

The claimant raised the following issues for Appeals Board review:

- (1) "Whether the Administrative Law Judge exceeded his jurisdiction in denying the relief requested at the hearing held on June 3, 1997."
- (2) "Whether claimant's counsel is entitled to attorney fees pursuant to K.S.A. 44-536."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire file, the Appeals Board finds as follows:

Claimant suffered accidental injury on June 3, 1994, while employed with respondent. Claimant was paid 44 weeks of temporary total disability compensation and on

January 5, 1996, was awarded a 74.5 percent work disability as a result of the injuries. On April 10, 1996, respondent offered claimant a job in an accommodated position at a comparable wage. In the June 3, 1997, post-award Order, the Administrative Law Judge transposed the temporary total disability numbers finding that claimant was paid 52.57 weeks when the stipulations indicated 44 weeks of temporary total disability compensation had been paid. The parties further stipulated that the period of time from when temporary total disability compensation ended until April 10, 1996, consisted of an additional 52.57 weeks.

Claimant, after reviewing the June 3, 1997, Order, felt that the Administrative Law Judge had denied claimant's request for additional compensation. However, in reviewing the Order of the Administrative Law Judge, the Appeals Board finds that claimant was found to be entitled to payments through April 10, 1996, at the rate of \$313.00 per week. This would include both the periods of temporary total disability compensation and permanent partial disability compensation until claimant was returned to work at a comparable wage.

The Appeals Board will next consider the amount of compensation due. In computing permanent partial disability under K.S.A. 44-510e for a post-July 1, 1993, injury, the parties must consider the new statutory computation methods. The Administrative Law Judge cited Romeo v. Smith, Docket No. 184,711, which states:

“ . . . If the disability rate goes down, as when the Claimant returns to work after being off for a period of time, and if the new calculation on the new rating results in fewer weeks than respondent has previously paid, respondent owes nothing more.”

After reviewing the Order and listening to the arguments of the parties, it appears that the Administrative Law Judge was proceeding under the assumption that respondent had paid the permanent partial disability compensation due and owing to claimant through April 10, 1996. However, at oral argument the parties agreed respondent had only paid 44 weeks of temporary total disability compensation and an additional 25.43 weeks permanent partial disability compensation, both at the rate of \$313.00 per week. Respondent advised the 25.43 weeks represented the 5 percent functional impairment with a slight overpayment above the 19.3 weeks which would have been due. Respondent argued that once claimant received the 5 percent functional impairment rating, the previously awarded 74.5 percent work disability became moot and additional monies would no longer be due and owing from respondent. However, the decisions of the Appeals Board, including Romeo, make it clear the 5 percent functional impairment would result in no additional money due and owing if respondent had previously paid the permanency due and owing for 52.57 weeks as the Administrative Law Judge assumed. The fact that the respondent has not paid the full 52.57 weeks results in an additional 27.14 weeks of compensation due claimant, after appropriate credit for the 25.43 weeks already paid.

The Appeals Board finds that the Order of Administrative Law Judge John D. Clark, dated June 3, 1997, should be affirmed in that claimant is entitled to payments through April 10, 1996, at the rate of \$313.00 per week. The Appeals Board corrects the

transposition of numbers in showing 44 weeks temporary total disability compensation paid and a total of 52.57 weeks permanent partial disability compensation due and owing.

Claimant requested attorney fees pursuant to K.S.A. 44-536 for the time expended in this argument. The Appeals Board finds that this matter is subsequent to the ultimate disposition of the original claim and attorney fees are proper. Claimant requested and the Appeals Board finds that five hours of time and \$100.00 per hour is proper under these circumstances. Therefore, an award of \$500.00 as attorney fees is ordered paid by respondent.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark, dated June 3, 1997, should be, and is hereby, affirmed and claimant is granted temporary total disability compensation for 44 weeks at the rate of \$313.00 per week, in the sum of \$13,772.00, followed thereafter by 52.57 weeks permanent partial disability compensation at the rate of \$313.00 per week in the sum of \$16,454.41, for a total due and owing of \$30,226.41 which, at the time of this Order, is all due and owing in one lump sum, minus amounts previously paid. In addition, respondent is ordered to pay \$500.00 to claimant's attorney as attorney fees pursuant to K.S.A. 44-536.

IT IS SO ORDERED.

Dated this ____ day of October 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven R. Wilson, Wichita, KS
Kirby A. Vernon, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director